



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

444 Hospital Way, #300 • Pocatello, Idaho 83201 • (208) 236-6160  
www.deq.idaho.gov

Governor Brad Little  
Director John H. Tippetts

June 5, 2019

Glen and Bernadine Tabor  
649 South 1300 West  
Pingree, ID 83262

RE: Final 401 Certification of the Tabor Riverbank Stabilization Project, Permit No. NWW-2019-142-102.

Dear Mr. and Mrs. Tabor:

The Pocatello Regional Office of the Idaho Department of Environmental Quality has reviewed the proposed final permit for the Tabor Riverbank Stabilization Project. Section 401 of the Federal Clean Water Act requires that states issue certifications for activities which are authorized by a Federal permit and that may result in a discharge to surface waters. In Idaho, the Department of Environmental Quality (DEQ) is responsible for reviewing these activities and evaluating whether the activity will comply with Idaho Water Quality Standards, including any applicable water quality management plans (e.g., total maximum daily loads). A federal permit cannot be issued until DEQ has provided a certification or waived certification either expressly or by taking no action.

This letter is to inform you that DEQ is issuing the attached final §401 certification for NWW-2019-142-102. Please note the general conditions required by our agency. In particular note under "Erosion and Sediment Control" the top elevation of the bank stabilization must match existing elevations such that the project does not create a dike or berm.

If you have any questions or concerns, please feel free to contact me at (208) 236-6160.

Sincerely,

A handwritten signature in blue ink, which appears to read "Lynn Van Every".

Lynn Van Every  
Regional Water Quality Manager

Cc: Bruce Olenick, Regional Administrator, Pocatello  
Loren Moore, 401 Program Coordinator, Boise  
James Joyner, U.S. Army Corps of Engineers, Idaho Falls



## Idaho Department of Environmental Quality Final §401 Water Quality Certification

June 5, 2019

**404 Permit Application Number:** NWW-2019-142-IO2, Tabor Riverbank Stabilization Project

**Nationwide Permit Number:** 13, Bank Stabilization

**Applicant/Authorized Agent:** Glen and Bernadine Tabor

**Project Location:** N 43.102137 Latitude, W -112.539633 Longitude; 649 South 1300 West, Pingree, ID 83262; Bingham County

**Receiving Water Body:** Snake River

---

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review activities receiving Section 404 dredge and fill permits and issue water quality certification decisions.

Based upon its review of the joint application for permit, received on April 8, 2019, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the activity will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

### Project Description

The project proposal is to protect several building structures (two homes and an associated shop) that are vulnerable to continued bank erosion on the Snake River. The applicant proposes to construct four or five riprap barbs, re-slope banks in between the barbs and reinforce with riprap, adding willow bundles and willow plantings on these re-sloped banks and re-introducing cottonwood trees along the top of the re-sloped bank. Approximately 1200 linear feet of riverbank will be impacted by this project and 150 feet of riprap armoring already has been placed on part of this eroding bank under emergency authorization from the U.S. Army Corps of Engineers and Idaho Department of Water Resources.

## Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- Tier I Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier II Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- Tier III Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier I protection for that use, unless specific circumstances warranting Tier II protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

## Pollutants of Concern

The primary pollutant of concern for this project is sediment. As part of the Section 401 water quality certification, DEQ is requiring the applicant comply with various conditions to protect water quality and to meet Idaho WQS, including the water quality criteria applicable to sediment.

## Receiving Water Body Level of Protection

This project is located on Snake River within the American Falls Subbasin assessment unit (AU) ID17040206SK022\_04 (Snake River). This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, primary contact recreation and drinking water supply. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100). According to DEQ's 2014 Integrated Report, this AU is not fully supporting one or more of its assessed uses. The aquatic life and the contact recreation beneficial uses in this receiving water body AU are not fully supported due to mercury impairment. As such, DEQ will provide Tier I protection for both the aquatic life and contact recreation uses (IDAPA 58.01.02.051.01).



### ***Protection and Maintenance of Existing Uses (Tier I Protection)***

A Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. The numeric and narrative criteria in the WQS are set at levels that ensure protection of existing and designated beneficial uses.

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a total maximum daily load (TMDL) must be prepared for those pollutants causing impairment. Once a TMDL is developed, discharges of causative pollutants shall be consistent with the allocations in the TMDL (IDAPA 58.01.02.055.05). Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04).

During the construction phase, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) directed toward reducing erosion and minimizing turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented, which will minimize or prevent future sediment contributions from the project area. The plan provides for revegetation of willows every 10 square feet and establishment of cottonwoods along the upper bank.

As long as the project is conducted in accordance with the provisions of the project plans, Section 404 permit, and conditions of this certification, then there is reasonable assurance the project will comply with the state's numeric and narrative criteria. These criteria are set at levels that protect and maintain existing and designated beneficial uses. Therefore, the permit ensures that the level of water quality necessary to protect both existing and designated uses is maintained and protected in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

## **Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law**

### ***General Conditions***

1. This certification is conditioned upon the requirement that any modification (e.g., change in BMPs, work windows, etc.) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.
2. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that, due to changes in relevant circumstances—including without limitation, changes in project activities, the characteristics of the receiving water bodies, or state WQS—there is no longer reasonable assurance of compliance with WQS or other appropriate requirements of state law.

3. If ownership of the project changes, the certification holder shall notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to another person or party. The new owner/operator shall request, in writing, the transfer of this water quality certification to his/her name.
4. A copy of this certification must be kept on the job site and readily available for review by any contractor working on the project and any federal, state, or local government personnel.
5. Project areas shall be clearly identified in the field prior to initiating land-disturbing activities to ensure avoidance of impacts to waters of the state beyond project footprints.
6. The applicant shall provide access to the project site and all mitigation sites upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.
7. The applicant is responsible for all work done by contractors and must ensure the contractors are informed of and follow all the conditions described in this certification and the Section 404 permit.
8. If this project disturbs more than 1 acre and there is potential for discharge of stormwater to waters of the state, coverage under the EPA Stormwater Construction General Permit *must* be obtained. More information can be found at <https://www.epa.gov/npdes-permits/stormwater-discharges-construction-activities-region-10>.

### ***Erosion and Sediment Control***

9. BMPs for sediment and erosion control suitable to prevent exceedances of state WQS shall be selected and installed before starting construction at the site. One resource that may be used in evaluating appropriate BMPs is DEQ's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties*, available online at <http://www.deq.idaho.gov/media/494058-entire.pdf>. Other resources may also be used for selecting appropriate BMPs.
10. Top elevations of bank stabilization must match existing elevations and shall be such that the project does not create a dike or berm that impedes normal flooding.
11. Disturbed areas suitable for vegetation shall be revegetated with native shrubs and trees to prevent subsequent soil erosion and provide streamside habitat.
12. Maximum fill slopes shall be such that material is structurally stable once placed and does not slough into the stream channel during construction, during periods prior to revegetation, or after vegetation is established.

### ***Turbidity***

13. Sediment resulting from this activity must be mitigated to prevent violations of the turbidity standard as stipulated under the Idaho WQS (IDAPA 58.01.02). *Any violation of this standard must be reported to the DEQ regional office immediately.*
14. All practical BMPs on disturbed banks and within the waters of the state must be implemented to minimize turbidity. Visual observation is acceptable to determine whether BMPs are functioning properly. If a persistent (lasting longer than 30 minutes) plume is observed, the project may be causing an exceedance of WQS and the permittee must cease work and inspect the condition of the project's BMPs. If the BMPs appear to

be functioning to their fullest capability, then the permittee must modify the activity or implement additional BMPs (this may also include modifying existing BMPs).

### ***In-water Work***

15. Work in open water is to be kept at a minimum and only when necessary. Equipment shall work from an upland site to minimize disturbance of waters of the state. If this is not practicable, appropriate measures must be taken to ensure disturbance to the waters of the state is minimized.
16. Construction affecting the bed or banks shall take place only during periods of low flow.

### ***Vegetation Protection and Restoration***

17. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
18. As per the application, riparian vegetation shall be successfully reestablished throughout the project area to function for water quality benefit. This should occur during the construction phase of the project where necessary (for example, willow clump placement in riprapped sections) and completed in other areas when major earthwork is complete. Cottonwood plantings should be established at 10 foot intervals along the upper bank and extend back into the pasture area approximately 30 feet or more, as discussed on site. Transplanted willows should be trimmed back to reduce transpiration losses while roots are becoming established.

### ***Management of Hazardous or Deleterious Materials***

19. Petroleum products and hazardous, toxic, and/or deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the state. Adequate measures and controls must be in place to ensure that those materials will not enter waters of the state as a result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.
20. Daily inspections of all fluid systems on equipment to be used in or near waters of the state shall be done to ensure no leaks or potential leaks exist prior to equipment use. A log book of these inspections shall be kept on site and provided to DEQ upon request.
21. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
22. In accordance with IDAPA 58.01.02.850, in the event of an unauthorized release of hazardous material to state waters or to land such that there is a likelihood that it will enter state waters, the responsible persons in charge must
  - a. Make every reasonable effort to abate and stop a continuing spill.
  - b. Make every reasonable effort to contain spilled material in such a manner that it will not reach surface or ground waters of the state.
  - c. Call 911 if immediate assistance is required to control, contain, or clean up the spill. If no assistance is needed in cleaning up the spill, contact the appropriate DEQ regional office during normal working hours or Idaho State Communications Center


after normal working hours (1-800-632-8000). If the spilled volume is above federal reportable quantities, contact the National Response Center (1-800-424-8802).

- Pocatello Regional Office: 208-236-6160 / 888-655-6160
- d. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.

## Right to Appeal Final Certification

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the “Rules of Administrative Procedure before the Board of Environmental Quality” (IDAPA 58.01.23), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to Greg Mladenka, Pocatello Regional Office, 208-236-6160, [greg.mladenka@deq.idaho.gov](mailto:greg.mladenka@deq.idaho.gov).



---

Bruce Olenick  
Regional Administrator  
Pocatello Regional Office